

**LETTER OPINION**  
**95-L-238**

October 20, 1995

Dr. Wayne G. Sanstead  
Superintendent of Public Instruction  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your letter asking five questions concerning interpretation of 1995 amendments to North Dakota's home school law.

The 1995 North Dakota Legislative Assembly amended North Dakota Century Code (N.D.C.C.) §§ 15-34.1-06 and 15-34.1-07. The relevant part of N.D.C.C. § 15-34.1-06 now reads:

A parent who has a high school diploma or a general education development certificate is qualified to supervise home-based instruction but must be monitored by a certificated teacher during the first two years the parent supervises that instruction, and if the child being instructed receives a composite standardized achievement test score below the fiftieth percentile nationally, the monitoring required by this section must continue during the following school year or longer if the child has not achieved the fiftieth percentile....

The relevant part of N.D.C.C. § 15-34.1-07(1) now reads:

A standardized achievement test used by the public school in the school district in which the parent resides or, if requested by the parent, a nationally normed standardized achievement test used by a state-approved nonpublic school must be given to each child receiving home-based instruction in grades three, four, six, eight, and eleven.

. . .

"The primary objective of statutory construction is to ascertain the intent of the legislature." Effertz v. North Dakota Workers' Compensation Bureau, 481 N.W.2d 218, 220 (N.D. 1992). "The legislative intent in enacting a statute must first be sought from the language of the statute itself." Id. at 220. "A statute must be

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construed so that an ordinary person reading it would get from it the usual, accepted meaning." Id. at 220. "The fact that the Legislature amends an existing statute is a clear indication that the Legislature intended to change the law." State Bank of Towner vs. Edwards, 484 N.W.2d 281, 282 (N.D. 1992).

Your first question is whether a parent with a high school diploma or a general education development (GED) certificate that moves into North Dakota after having spent a period of time supervising home-based instruction in another state must be monitored for the first two years of home-based instruction in North Dakota pursuant to N.D.C.C. § 15-34.1-06. The answer to this question requires reference to other provisions of law. Statutes in pari materia (i.e., upon the same matter or subject) are to be considered and given meaningful effect without rendering one or the other useless. Litten v. City of Fargo, 294 N.W.2d 628, 633 (N.D. 1980).

N.D.C.C. § 15-34.1-09 requires a certified teacher who monitors a home-based instruction to notify the child's public school district of residence that the teacher is providing such monitoring services. Further, the quality assurance rules adopted by the Superintendent of Public Instruction pursuant to N.D.C.C. § 15-34.1-07 require the superintendent of the school district of residence to determine reasonable academic progress, to assure that the monitoring teacher in a monitored program is certified, and to keep a school district cumulative folder for each student receiving home-based instruction. N.D. Admin. Code §§ 67-06-03-02, 67-06-03-03, and 67-06-03-04. Also, the monitoring teacher must provide progress reports for monitored programs under N.D. Admin. Code § 67-06-04-02(2) wherein the monitoring teacher evaluates for academic progress based on the program of studies for required subjects, observation of the student, conference with the parent, and data recorded by the parent. The monitoring teachers' evaluations are to be compiled in a report which documents progress in each subject area.

Reading the above sections of law together makes it appear that the monitoring requirement in North Dakota is to be documented and recorded according to specific procedures. This recording allows the local school district superintendent to determine the duration of the monitoring of a home-schooling program requiring it, as well as to determine when the home-schooled child's composite standardized achievement test reaches the minimum level after two years of monitoring. It is therefore my opinion that home-schooling parents moving into North Dakota must be monitored pursuant to North Dakota law if the parent's own educational background requires monitoring.

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Your second question is whether a supervising home-school parent must meet the two-year monitoring requirement for each of that parent's children that become involved in home-based instruction. N.D.C.C. § 15-34.1-06 states that a parent with a high school diploma or GED certificate "must be monitored by a certificated teacher during the first two years the parent supervises that instruction, and if the child being instructed receives a composite standardized achievement test score below the fiftieth percentile nationally, the monitoring required by this section must continue during the following school year or longer if the child has not achieved the fiftieth percentile."

 (emphasis added.) It is my opinion that N.D.C.C. § 15-34.1-06 makes it apparent that the qualifications of a parent with a high school diploma or GED certificate is determined on a per-child basis based on the parents being monitored for two years with each child and each child's successful performance on the standardized achievement test.

Your third question is whether a home-schooling parent whose monitoring requirement has ceased because the parent was monitored for at least two years pursuant to N.D.C.C. § 15-34.1-06 and whose child then scored at or above the fiftieth percentile on the standardized achievement test, must again be monitored if that child later scores below the fiftieth percentile on a standardized achievement test taken in a later year pursuant to N.D.C.C. § 15-34.1-07. In other words, must the monitoring be restarted if achievement test scores fall below the fiftieth percentile after the monitoring is once terminated pursuant to the statute?

Our North Dakota Supreme Court has stated:

It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the 'court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it'.

Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993), (quoting City of Dickinson v. Thress, 69 N.D. 748, 290 N.W. 653, 657 (1940)).

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The language in N.D.C.C. § 15-34.1-06, concerning home schooling by parents with a high school diploma or a GED certificate, is clear in requiring that monitoring be performed during the first two years of home school supervision and until the child being supervised scores at or above the fiftieth percentile on the standardized achievement test. There is no provision contained in the law for monitoring to be resumed once it has been terminated pursuant to the statute. It is therefore my opinion that if a high school graduate or GED certificated parent once qualifies for the cessation of monitoring for a particular child whose home schooling is being supervised by that parent, that a later standardized achievement test score by that child below the fiftieth percentile does not impose on that home schooling parent for that child the resumption of monitoring. It should be noted here that a child scoring below the thirtieth percentile nationally on the standardized achievement test may fall into other assessment and evaluation requirements under N.D.C.C. § 15-34.1-07(2) and its supporting administrative rules.

Your fourth question is, if a nationally standardized achievement test is not scheduled to be given under N.D.C.C. § 15-34.1-07(1) (that is, in grades three, four, six, eight, or eleven), during the first two years of monitoring, must monitoring continue until the test is taken and the appropriate score achieved. N.D.C.C. § 15-34.1-07(1) requires home-schooled children to take a nationally standardized achievement test only in grades three, four, six, eight, and eleven. The cessation of monitoring after the initial two years is contingent on the child receiving a composite standardized achievements test score at or above the fiftieth percentile nationally, otherwise, the monitoring must continue during the following school year or longer if the child has not achieved the fiftieth percentile. Consequently, both a minimum of two years of monitoring and successful performance on the nationally standardized achievement test is required for the parent to qualify for cessation of monitoring of the parent's supervision of the home-schooled child. It is therefore my opinion that a high school graduate or GED certificated home-school supervising parent must be monitored for the initial two years of home-school supervision and until that child being monitored scores at or above the fiftieth percentile on the standardized achievement test, and that if no testing is required immediately upon the conclusion of the first two years of monitoring, the monitoring must continue until the minimum test score is achieved on a required test.

Your fifth question is whether the Department of Public Instruction by administrative rule may require standardized achievement testing at grades other than or in addition to those specified in N.D.C.C. § 15-34.1-07. In 1995, the Legislative Assembly amended N.D.C.C.

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§ 15-34.1-07 to reduce the number of standardized achievement tests that must be taken by home-school children from annually to five specific grades. See 1995 N.D. Sess. Laws ch. 188, § 2. The legislative history shows that requiring the standardized achievement test in grades three, six, eight, and eleven is the same testing sequence that applies to public school children. Hearing on H.R. 1488 Before the House Comm. on Education, 54th ND Leg. (January 30, 1995) (Statement of Pat Herbel). Because of the concern over home-schooled children and the possibility for regression between grades three and six, the Legislature specifically imposed an additional standardized achievement test at grade four. Hearing on H.R. 1488 Before the House-Senate Conference Committee on Education, 54th ND Leg. (March 30, 1995) (Statements of Reps. Boehm and Hanson, and Sen. Wanzek). Thus, the Legislative Assembly specifically intended to change the law to require testing in five specific grades. The Legislature Assembly did not authorize the Department of Public Instruction to make rules requiring additional testing. It must be presumed the Legislative Assembly intended to say what it said and that it said all that it intended to say. Therefore, it is my opinion that the Department of Public Instruction is not authorized to require, by administrative rule, standardized achievement testing in grades other than those specified by statute.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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